

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**JANICE J. HERR, individually and as
Special Administrator on behalf of
THE ESTATE OF RICHARD J. HERR,
Deceased,**

Plaintiff,

-vs-

Case No. 10-C-1114

**LINDE LLC, improperly sued as Linde, Inc.,
f/k/a the BOC Group, Inc. and/or Airco, Inc.,**

Defendant.

DECISION AND ORDER

The plaintiff, Janice Herr, moves to strike the motion for summary judgment filed by the remaining defendant in this case, Linde, LLC, formerly known as the BOC Group, Inc.. Herr argues that the motion is untimely pursuant to the scheduling order established by the MDL court. Even so, the Court would prefer to address the merits of the defendant's arguments instead of conducting a trial that is potentially unnecessary. Therefore, the motion to strike [ECF No. 29] is **DENIED**.

The Court also notes some confusion over the citizenship of the defendant. This matter was removed from state court and subsequently transferred to the Eastern District of Pennsylvania for consolidated

pretrial proceedings, MDL Docket No. 875. Subject matter jurisdiction is premised upon diversity of citizenship, 28 U.S.C. § 1332(a), and the citizenship of a limited liability company is the citizenship of each of its members. *Thomas v. Guardsmark, LLC*, 487 F.3d 531, 534 (7th Cir. 2007). Before proceeding to resolution, the Court must be assured that none of the defendant's members are Wisconsin citizens. The parties should address this issue in the briefing that flows from the pending motion for summary judgment. See ECF No. 34.

Dated at Milwaukee, Wisconsin, this 31st day of July, 2015.

SO ORDERED:


HON. RUDOLPH T. RANDA
U.S. District Judge